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EXAMINER	
KIDWELL, MICHELE M	
ART UNIT	**PAPER NUMBER**
3761	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

E

Office Action Summary	Application No.	Applicant(s)	
	10/034,637	POTTS ET AL.	
	Examiner	Art Unit	
	Michele Kidwell	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11,13,14,16-27,29,30,32-36 and 38-41* is/are pending in the application.

4a) Of the above claim(s) *2-5 and 18-21* is/are withdrawn from consideration.

5)☒ Claim(s) *14,30 and 39* is/are allowed.

6)☒ Claim(s) *1,6-11,13,16,17,22-27,29,32-36,38,40 and 41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *032105*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 2 – 5 and 18 – 21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 22, 2005.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 6 – 11, 13, 16, 17, 22 – 27, 29, 32 – 36, 38 and 40 – 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yahiaoui et al. (WO 98/10134).

With respect to claim 1, Yahiaoui et al. (hereinafter "Yahiaoui") discloses the a personal care absorbent article (page 3, lines 1 – 3) comprising an outer cover layer, a liner layer, and a containment layer between the outer cover and the liner layer wherein at least one of the layers comprises a pulp – based nonwoven web material (page 10, lines 9 – 13) treated with a density modulator consisting essentially of an alkyl glycoside (page 2, lines 34 – 36 and page 11, lines 2 – 4) wherein the at least one layer treated with the density modulator increases in thickness by at least about 12% when the at

least one layer comes into contact with a blood – containing body fluid as set forth on page 2, lines 20 – 30, page 10, lines 9 – 13 and on page 11, lines 2 – 7.

Yahiaoui incorporates the reference of Yahiaoui (US 5,540,979) on page 10, lines 9 – 13 which discloses the personal care article comprising) comprising an outer cover layer (716), a liner layer (712) and a containment layer (718) between the outer cover and the liner layer (figure 7) wherein at least one of the layers comprises a pulp – based nonwoven web material (col. 7, lines 17 – 22).

The difference between Yahiaoui and claim 1 is the provision that the layer treated with the density modulator increases in thickness by at least about 12% when the at least one layer comes into contact with a blood – containing bodily fluid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the layer of Yahiaoui that is treated with the density modulator would ultimately increase in thickness by at least about 12% when the layer comes into contact with a blood – containing body fluid because Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7) which is identical to that claimed by the subject application on page 14, lines 12 – 15.

The claimed invention is directed to an absorbent article treated with a density modulator. The density modulator makes the treated material in the absorbent article more wettable, thus increasing the article's intake capacity and also lowers the density of the treated material when the material comes into contact with a blood – containing fluid. By lowering the density of the treated material, the volume of the material increases. See page 5, lines 10 – 16 of the instant specification.

Likewise, Yahiaoui discloses the use of the same density modulator (GLUCOPON 220) as used by the applicant. Therefore, it has been established that Yahiaoui provides an absorbent article treated with a density modulator, which in turn, would increase the thickness of the treated layer when that layer comes into contact with a blood – containing body fluid. In light of this, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

The difference between Yahiaoui and claim 6 is the provision that the density modulator is applied to the containment layer.

Yahiaoui discloses the density modulator may be applied to a multilayer laminate as set forth on page 2, lines 20 – 23.

It would have been obvious to one of ordinary skill in the art to apply the density modulator to the containment layer in view of the Yahiaoui disclosure because Yahiaoui discloses that the density modulator may be applied to any nonwoven of particular use for personal care articles (page 3, lines 1 – 3). Likewise, Yahiaoui discloses that fabrics suitable for use with the invention are multilayered laminates (page 10, line 9). Therefore, it can be reasonably assumed that one of ordinary skill in the art would be motivated to provide the containment layer of the multilayered laminate with the density modulator since the containment has been disclosed as a nonwoven (col. 5, line 65 of the '979 patent) which is of particular use for a personal care product as taught by the '979 reference in col. 3, line 66 to col. 4, line 34.

The difference between Yahiaoui and claim 7 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 8 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general

conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 9 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 10 is the provision that the density modulator is applied to the containment layer.

Yahiaoui discloses that the density modulator is useful for a diaper liner (page 10, line 29) and that the density modulator may be applied to a multilayer laminate as set forth on page 2, lines 20 – 23.

It would have been obvious to one of ordinary skill in the art to apply the density modulator to the containment layer in view of the Yahiaoui disclosure because Yahiaoui discloses that the density modulator may be applied to any nonwoven of particular use

for personal care articles (page 3, lines 1 – 3). Likewise, Yahiaoui discloses that fabrics suitable for use with the invention are multilayered laminates (page 10, line 9). Therefore, it can be reasonably assumed that one of ordinary skill in the art would be motivated to provide the containment layer of the multilayered laminate with the density modulator since the containment has been disclosed as a nonwoven (col. 5, line 65 of the '979 patent) which is of particular use for a personal care product as taught by the '979 reference in col. 3, line 66 to col. 4, line 34.

The difference between Yahiaoui and claim 11 is the provision that the density modulator reduces the density of the containment layer without lysing red blood cells when the containment layer comes into contact with a blood – containing bodily fluid.

Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7), which is identical to that, claimed by the subject application on page 14, lines 12 – 15. Therefore, while Yahiaoui does not specifically disclose the reduction of density without lysing red blood cells, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

Regarding claim 13, Yahiaoui discloses a pulp – based nonwoven web material comprising a material selected from the listed group as set forth on page 10, lines 9 – 13 through the incorporation of Yahiaoui which discloses the pulp – based nonwoven web material comprising a material selected from the listed group as set forth in col. 6, lines 26 – 30.

Regarding claim 16, Yahiaoui discloses that the invention is useful for personal care products. A personal care product is well known in the art to include any item intended for use by one person only (i.e. personal use) which includes a wound dressing.

With respect to claim 17, Yahiaoui discloses a catamenial device (page 3, lines 1 – 3) comprising an outer cover layer, a liner layer, and a containment layer between the outer cover and the liner layer wherein at least one of the layers comprises a pulp – based nonwoven web material (page 10, lines 9 – 13) treated with a density modulator consisting essentially of an alkyl glycoside (page 2, lines 34 – 36 and page 11, lines 2 – 4) wherein the at least one layer treated with the density modulator increases in thickness by at least about 12% when the at least one layer comes into contact with a blood – containing body fluid as set forth on page 2, lines 20 – 30, page 10, lines 9 – 13 and on page 11, lines 2 – 7.

Yahiaoui incorporates the reference of Yahiaoui (US 5,540,979) on page 10, lines 9 – 13 which discloses the personal care article comprising) comprising an outer cover layer (716), a liner layer (712) and a containment layer (718) between the outer cover and the liner layer (figure 7) wherein at least one of the layers comprises a pulp – based nonwoven web material (col. 7, lines 17 – 22).

The difference between Yahiaoui and claim 17 is the provision that the layer treated with the density modulator increases in thickness by at least about 12% when the at least one layer comes into contact with a blood – containing bodily fluid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the layer of Yahiaoui that is treated with the density modulator would ultimately increase in thickness by at least about 12% when the layer comes into contact with a blood – containing body fluid because Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7) which is identical to that claimed by the subject application on page 14, lines 12 – 15.

The claimed invention is directed to an absorbent article treated with a density modulator. The density modulator makes the treated material in the absorbent article more wettable, thus increasing the article's intake capacity and also lowers the density of the treated material when the material comes into contact with a blood – containing fluid. By lowering the density of the treated material, the volume of the material increases. See page 5, lines 10 – 16 of the instant specification.

Likewise, Yahiaoui discloses the use of the same density modulator (GLUCOPON 220) as used by the applicant. Therefore, it has been established that Yahiaoui provides an absorbent article treated with a density modulator, which in turn, would increase the thickness of the treated layer when that layer comes into contact with a blood – containing body fluid. In light of this, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

The difference between Yahiaoui and claim 22 is the provision that the density modulator is applied to the containment layer.

Yahiaoui discloses the density modulator may be applied to a multilayer laminate as set forth on page 2, lines 20 – 23.

It would have been obvious to one of ordinary skill in the art to apply the density modulator to the containment layer in view of the Yahiaoui disclosure because Yahiaoui discloses that the density modulator may be applied to any nonwoven of particular use for personal care articles (page 3, lines 1 – 3). Likewise, Yahiaoui discloses that fabrics suitable for use with the invention are multilayered laminates (page 10, line 9). Therefore, it can be reasonably assumed that one of ordinary skill in the art would be motivated to provide the containment layer of the multilayered laminate with the density modulator since the containment has been disclosed as a nonwoven (col. 5, line 65 of the '979 patent) which is of particular use for a personal care product as taught by the '979 reference in col. 3, line 66 to col. 4, line 34.

The difference between Yahiaoui and claim 23 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general

conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 24 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 25 is the provision that the density modulator is applied to the containment layer in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to the containment layer in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to the containment layer is within the level of skill of one of ordinary art (see the rejection of claim 6), the examiner further contends that it would have been obvious

to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 26 is the provision that the density modulator is applied to the containment layer.

Yahiaoui discloses that the density modulator is useful for a diaper liner (page 10, line 29) and that the density modulator may be applied to a multilayer laminate as set forth on page 2, lines 20 – 23.

It would have been obvious to one of ordinary skill in the art to apply the density modulator to the containment layer in view of the Yahiaoui disclosure because Yahiaoui discloses that the density modulator may be applied to any nonwoven of particular use for personal care articles (page 3, lines 1 – 3). Likewise, Yahiaoui discloses that fabrics suitable for use with the invention are multilayered laminates (page 10, line 9). Therefore, it can be reasonably assumed that one of ordinary skill in the art would be motivated to provide the containment layer of the multilayered laminate with the density modulator since the containment has been disclosed as a nonwoven (col. 5, line 65 of the '979 patent) which is of particular use for a personal care product as taught by the '979 reference in col. 3, line 66 to col. 4, line 34.

The difference between Yahiaoui and claim 27 is the provision that the density modulator reduces the density of the containment layer without lysing red blood cells when the containment layer comes into contact with a blood – containing bodily fluid.

Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7), which is identical to that, claimed by the subject application on page 14, lines 12 – 15. Therefore, while Yahiaoui does not specifically disclose the reduction of density without lysing red blood cells, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

Regarding claim 29, Yahiaoui discloses a pulp – based nonwoven web material comprising a material selected from the listed group as set forth on page 10, lines 9 – 13 through the incorporation of Yahiaoui which discloses the pulp – based nonwoven web material comprising a material selected from the listed group as set forth in col. 6, lines 26 – 30.

With respect to claim 32, Yahiaoui discloses the a catamenial device (page 3, lines 1 – 3) comprising porous synthetic substrate including a pulp – based nonwoven web material (page 10, lines 9 – 13) treated with a density modulator consisting essentially of an alkyl glycoside (page 2, lines 34 – 36 and page 11, lines 2 – 4) wherein the at least one layer treated with the density modulator increases in thickness by at least about 12% when the at least one layer comes into contact with a blood – containing body fluid as set forth on page 2, lines 20 – 30, page 10, lines 9 – 13 and on page 11, lines 2 – 7.

Yahiaoui incorporates the reference of Yahiaoui (US 5,540,979) on page 10, lines 9 – 13 which discloses a porous synthetic substrate as set forth in col. 6, lines 39 – 49.

The difference between Yahiaoui and claim 32 is the provision that this particular substrate is treated with the density modulator and when treated will increase in thickness by at least about 12% when the substrate comes into contact with a blood – containing bodily fluid.

First, it would have been obvious to one of ordinary skill in the art to apply the density modulator to the substrate disclosed by Yahiaoui (US 5540979) because Yahiaoui discloses that the density modulator may be applied to any nonwoven of particular use for personal care articles (page 3, lines 1 – 3). Likewise, Yahiaoui discloses that fabrics suitable for use with the invention are multilayered laminates (page 10, line 9). Therefore, it can be reasonably assumed that one of ordinary skill in the art would be motivated to provide the containment layer of the multilayered laminate with the density modulator since the containment has been disclosed as a nonwoven (col. 5, line 65 of the '979 patent) which is of particular use for a personal care product as taught by the '979 reference in col. 3, line 66 to col. 4, line 34.

Second, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the layer of Yahiaoui that is treated with the density modulator would ultimately increase in thickness by at least about 12% when the layer comes into contact with a blood – containing body fluid because Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11,

lines 2 – 7) which is identical to that claimed by the subject application on page 14, lines 12 – 15.

The claimed invention is directed to an absorbent article treated with a density modulator. The density modulator makes the treated material in the absorbent article more wettable, thus increasing the article's intake capacity and also lowers the density of the treated material when the material comes into contact with a blood – containing fluid. By lowering the density of the treated material, the volume of the material increases. See page 5, lines 10 – 16 of the instant specification.

Likewise, Yahiaoui discloses the use of the same density modulator (GLUCOPON 220) as used by the applicant. Therefore, it has been established that Yahiaoui provides an absorbent article treated with a density modulator, which in turn, would increase the thickness of the treated layer when that layer comes into contact with a blood – containing body fluid. In light of this, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

The difference between Yahiaoui and claim 33 is the provision that the density modulator is applied to the porous synthetic substrate in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to a substrate in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to a substrate is within the level of skill of one of ordinary art (see the rejection of claim 32), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 34 is the provision that the density modulator is applied to the porous synthetic substrate in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to a substrate in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to a substrate is within the level of skill of one of ordinary art (see the rejection of claim 32), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 35 is the provision that the density modulator is applied to the porous synthetic substrate in a specific concentration.

Yahiaoui discloses that the density modulator may be applied to nonwoven fabrics is applied to a substrate in an amount of about 5% to about 80% as set forth on page 11, lines 2 – 7.

Because it has already been established that the application of the density modulator to a substrate is within the level of skill of one of ordinary art (see the rejection of claim 32), the examiner further contends that it would have been obvious to one of ordinary skill in the art to modify the amount of density modulator being applied to the containment layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

The difference between Yahiaoui and claim 36 is the provision that the density modulator reduces the density of the containment layer without lysing red blood cells when the containment layer comes into contact with a blood – containing bodily fluid.

Yahiaoui discloses the application of low concentrations of the GLUCOPON 220 to a nonwoven layer (page 11, lines 2 – 7), which is identical to that, claimed by the subject application on page 14, lines 12 – 15. Therefore, while Yahiaoui does not specifically disclose the reduction of density without lysing red blood cells, it can be reasonably assumed that the density modulator of Yahiaoui would yield the same results as the claimed invention since the same substance and concentration taught by the claimed invention has been disclosed by Yahiaoui.

Regarding claim 38, Yahiaoui discloses a pulp – based nonwoven web material comprising a material selected from the listed group as set forth on page 10, lines 9 –

13 through the incorporation of Yahiaoui which discloses the pulp – based nonwoven web material comprising a material selected from the listed group as set forth in col. 6, lines 26 – 30.

Regarding claim 40, Yahiaoui discloses that the invention is useful for personal care products. A personal care product is well known in the art to include any item intended for use by one person only (i.e. personal use), which includes a sanitary pad.

Regarding claim 41, Yahiaoui discloses that the invention is useful for personal care products. A personal care product is well known in the art to include any item intended for use by one person only (i.e. personal use), which includes a tampon.

Allowable Subject Matter

Claims 14, 30 and 39 allowed.

Response to Arguments

Applicant's arguments filed October 17, 2005 have been fully considered but they are not persuasive.

In response to the applicant's argument that Yahiaoui does not disclose a density modulator consisting essentially of alkyl glycoside, the examiner disagrees. Yahiaoui discloses a composition in which alkyl glycoside is present in amounts up to about 80% of the total composition weight (page 11, lines 2 – 7), which meets the claimed limitation that the density modulator consists essentially of alkyl glycoside.

Likewise, Yahiaoui discloses the use of the same density modulator (GLUCOPON 220) as used by the applicant. Therefore, it has been established that Yahiaoui provides an absorbent article treated with a density modulator, which in turn, would increase the thickness of the treated layer when that layer comes into contact with a blood – containing body fluid.

With respect to the applicant's argument regarding a density modulator that "consists essentially of" an alkyl glycoside, the examiner contends that absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." See, e.g., PPG, 156 F.3d at 1355, 48 USPQ2d at 1355. See also AK Steel Corp. v. Sollac, 344 F.3d 1234, 1240-41, 68 USPQ2d1280, 1283-84 (Fed. Cir. 2003)

If an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. See MPEP 2111.03

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michele Kidwell
Primary Examiner
Art Unit 3761